

**STATE OF WEST VIRGINIA
LAND SALES AND CONDOMINIUM DIVISION
BEFORE THE LAND SALES AND CONDOMINIUM DIRECTOR
CHARLESTON, WEST VIRGINIA 25305**

IN THE MATTER OF:

CASE NO.: 11-0104

**JOHN DOE A/K/A
MICHAEL GRACE, OTHER
UNKOWN INDIVIDUALS
D/B/A HELPUSELL
TIMESHARES**

**SUMMARY ORDER TO CEASE AND
DESIST, SUSPENDING EXEMPTIONS
AND NOTICE OF RIGHT TO
HEARING**

RESPONDENTS.

SUMMARY ORDER

WHEREAS, pursuant to the authority granted by the West Virginia Real Estate Time-Sharing Act, (hereinafter "the Act")(Article 9, Chapter 36 of the West Virginia Code, W. Va. Code 36-9 (2011)), the Division of Land Sales and Condominiums under the State Auditor (hereinafter "Division") has investigated the activities of the above named entities and individuals (hereinafter "Respondents").

WHEREAS, as a result of the Division's investigation, the Director of the Land Sales and Condominium Division, by the authority vested in him by Chapter 36, Article 9, Section 23 of the Act, finds as follows:

RESPONDENTS

1. "HelpUSellTimeshares" ("Respondent HUS") is a business entity with the last known address of 875 North Michigan Ave, 31st Floor, Chicago, IL 60611.
2. "John Doe" a/k/a "Michael Grace" ("Respondent Grace") is an individual representing himself to be an employee of Respondent HUS.

FINDINGS OF FACT

3. Paragraphs 1 and 2 are incorporated by reference as if fully set forth herein.
4. Respondent HUS represented itself as a timeshare resale company.

5. Respondent Grace represented himself as an employee and representative of Respondent HUS.
6. In or around December, 2009, a West Virginia citizen received a phone call from a "Mr. Gibbs," who represented that he desired to purchase the citizen's timeshare unit in Williamsburg, Virginia. "Mr. Gibbs" suggested that he and the citizen use the resale services of Respondent HUS and Respondent Grace to complete the transaction.
7. Respondent Grace, acting on behalf of Respondent HUS, contacted the West Virginia citizen via telephone in or around December 2009, and communicated the following:
 - a. HUS will do all the "leg work" to get the timeshare sale completed to "Mr. Gibbs."
 - b. To complete the sale, the citizen was required to pay the sum of two-thousand dollars (\$2,000.00) in "earnest money."
 - c. The sale would be completed in no less than seven weeks after receipt of payment.
8. The West Virginia citizen was, at the time of the solicitation, the current owner of a timeshare unit.
9. After Respondents Grace and HUS procured the upfront payment from the citizen and deposited the check into an Arizona bank account, there was no further contact or communication between the parties despite numerous attempts by the citizen.
10. No payment, in any amount, was ever received by the West Virginia citizen, and no actual sale or resale of the timeshare unit was executed or completed.
11. Respondents never sent or utilized a contract for the resale services.
12. The West Virginia citizen was never advised, either through contract or verbal communication, of the right to cancel the contract or the statutorily acceptable time-frame in which to cancel the contract for sale or resale.

CONCLUSIONS OF LAW

13. Paragraphs 1 through 12 are incorporated by reference as if fully set forth herein.
14. Respondents have violated West Virginia Code § 36-9-5 by failing to furnish a complete copy of the contract, containing all the required information and statements, pertaining to the sale or resale of the time-share plan.
15. Respondents have violated West Virginia Code § 36-9-5 by failing to utilize a complete contract pertaining to the sale or resale of the time-share plan. The contract must have contained (a) the dates of execution of the contract, (b) the names and addresses of the seller, the developer and the time-sharing plan, (c) the total financial obligation of the purchaser, including the initial purchase price and any additional charges to which the purchaser may be subject (such as

reservation, maintenance, management and recreation fees)¹, (d) the estimated date of availability of each accommodation or facility which is not completed at the time the contract is executed by the seller and purchaser, (e) a description of the nature and duration of the time-share period being sold, including whether any interest in real property is being conveyed and the specific number of years or months constituting the terms of the contract, (f) a conspicuous, recognizable disclosure of the availability of cancellation, in large, bold-face type, (g) a statement that oral representations cannot be relied upon and that the seller makes no representations other than those contained in the contract, (h) A statement that, in the event the purchaser cancels the contract during a ten-day cancellation period, the developer shall refund to the purchaser all payments made under the contract within twenty days after notice of cancellation is received.

16. Respondent has violated West Virginia Code § 36-9-5 by failing to furnish a complete copy of the contract for sale to the purchaser at least ten days before the date of closing.

17. Respondent has violated West Virginia Code § 36-9-9(b) by misrepresenting the purchaser's right to cancel.

18. Respondent has violated West Virginia Code § 36-9-10(b) by misrepresenting facts and/or creating a false or misleading impression regarding the time sharing plan during the verbal sales pitch.

ORDER

The Director, pursuant to the powers granted in the West Virginia Code § 36-9-1, *et. seq.*, **ORDERS** that:

1. Respondents summarily **CEASE AND DESIST** from soliciting and offering to sell or resell the aforesaid time-share plans or units, either directly or indirectly through officers, directors, employees, representative agent, affiliates, successors or assigns, unless and until compliance with the Act has been achieved and until further Order of the Director.
2. Respondent summarily **CEASE AND DESIST** from contacting West Virginia citizens for the purpose of offering services or advertising materials to sell or resell any time-share or time-share related interest.
3. Pursuant to West Virginia Code § 36-9-23(a)-(e)(1-3), any exemptions from the requirements of the Act claimed by the Respondent are hereby summarily **REVOKED AND SUSPENDED** pending final determination of the proceedings herein, and until further Order of the Director.
4. Respondents **SHOW CAUSE** within fifteen (15) days after receipt of this Order, through responding to each and every paragraph set forth herein, why this Order should not be made final and permanent and why Respondents should not be ordered to offer rescission to the purchasers of its services.

¹ The costs which cannot be reasonable specified exactly shall be estimated and the purchaser shall be notified that those costs are subject to change. (W. Va. Code § 36-9-5(c) (2011)).

5. **NOTICE** is hereby given that Respondent may be afforded a hearing in this matter if a written request is made by Respondent, and such request contains a written response to each and every paragraph contained herein. A request for hearing must be in writing and received by the Director within fifteen (15) days after receipt of this Order. If a timely request for a hearing is made, a hearing on this matter will be set for the purpose of determining whether this Order shall be modified, vacated, or made permanent.

6. If the Respondent does not timely show cause or timely request a hearing or fail to attend a duly scheduled hearing in this matter after receiving notice thereof, the allegations contained in this Order will be deemed true without further proof, Respondents shall be deemed in default, and this Order will become final and permanent without further notice to you and an administrated assessment will be imposed in accordance with West Virginia Code § 36-9-23(e)(2) and (3).

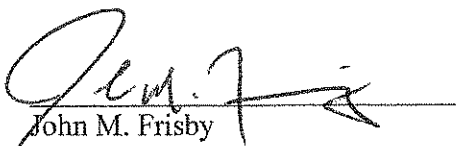
7. Any violation of this Order will constitute a violation of Chapter 36, Article 9, Section 23 of the Act, and if any violation comes to the attention of the Director, the matter will be pursued in the Circuit Court, and the Respondent may held liable for further civil or administrative penalties.

This Order does not prevent the West Virginia Land Sales and Condominium Division from seeking such other civil or criminal remedies that may be available to it under the Act.

ENTERED this 6th day of June 2012.

Glen B. Gainer III
Director of Land Sales and Condominiums

By:


John M. Frisby
Senior Investigator, Enforcement Division
West Virginia State Auditor's Office
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